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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/645,167 | 08/20/2003 | Scott McCuan | | 7619 |

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| EXAMINER |
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PECHHOLD, ALEXANDRA K

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| ART UNIT | PAPER NUMBER |
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3671

DATE MAILED: 02/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,167

Applicant(s)

MCCUAN ET AL.

Examiner

Alexandra K Pechhold

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-15 is/are allowed.
- 6) ☒ Claim(s) 1-7, 10 and 16 is/are rejected.
- 7) ☒ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-3, 6, 10, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman (US 5,143,478).**

Regarding claim 1, Bowman discloses a device to inhibit entry of debris and other matter into a conduit comprising:

- an outer band, seen as keeper ring (18), an inner band, seen as base ring (11), wherein said inner band disposed interior to said outer band as Figs. 1 and 2 show, and a cover, disclosed in column 5, lines 19-21 and 30-32, wherein a perimeter edge of said cover is between said outer band and said inner band;
- said outer band having two separated ends, shown in Fig. 1 with the gap (27) therebetween, and said inner band having two separated ends seen as ends (12) and (13) in Fig. 1; and
- an expansion clamp attached to one of said inner band and said outer band, seen as wrench grip (16) in Fig. 1.

Bowman fails to disclose that the cover is fastened, instead just merely noting its placement in column 5, lines 19-21 and 30-32, which is between the outer ring (18) and

Art Unit: 3671

inner ring (11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover of Bowman to be fastened in its location, since it is well known in the art of manholes to secure covers by some fastening means to prevent their unintentional displacement or removal.

Regarding claim 2, a portion of said outer band having a portion of said outer band overlapping adjacent said two separated ends, seen as cover (28) in Fig. 1 which is part of the outer band that overlaps the separated ends, and said expansion clamp is attached to said inner band, shown in Fig. 1.

Regarding claim 3, Fig. 1 of Bowman illustrates a plurality of screws at (14) and (14').

Regarding claim 6, a plurality of anchor bolts threadably engaged with said inner band is shown in Fig. 1, and said anchor bolts are movable through said inner band and said outer band since they constrict or expand the size of base ring (11) which in turn constricts or expands the size of the keeper ring (18).

Regarding claim 10, Bowman fails to disclose the inner band as being narrower than the outer band. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the thickness of ring (11) and ring (18) so that ring (11) is narrower, since such a dimensional modification does not affect the structure and function of the adjustable manhole cover support of Bowman.

Regarding claim 16, the wrench grip (16) is indirectly attached to the outer band.

3. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman (US 5,143,478) as applied to claim 1 above, and further in view of DeCenzo (US 4,438,958).

Regarding claim 4, the expansion clamp comprising: an adjustment rod, seen as rod with threads (14), a rod retainer bracket having an opening therein, seen as threaded sockets (12, 13). But Bowman fails to disclose the expansion clamp comprising a lever bracket having a lever rotatably attached at a lever rotation end. DeCenzo teaches such a lever used in clamping, seen as toggle clamp (L1) with lever arm (32), used to bring together a clam shell configuration into a secured coupling. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wrench grip (16) of Bowman to include a lever bracket having a lever rotatably attached at a lever rotation end as taught by DeCenzo, since such a lever toggle provides a secured coupling between portions of a shell.

Regarding claim 5, the adjustment rod of Bowman is threaded, seen as rod with threads (14).

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman (US 5,143,478) as applied to claim 1 above, and further in view of Sauriol et al (US 3,920,347). Bowman fails to disclose a handle, but Sauriol teaches a handle rings (60) on a cover. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover of Shenk to include a handle as taught by Sauriol, since Sauriol's handle facilitates removal of the cover which provides greater accessibility.

Art Unit: 3671

Response to Arguments

5. Applicant's after-final amendment has not been entered in light of reconsideration of the prior art and claim language. Therefore, the Examiner is issuing a Non-final Office Action in response to the 9/10/04 claim amendments. The previously indicated allowable subject matter has been withdrawn in view of a new grounds of rejection for some of the claims.

Allowable Subject Matter

6. Claims 11-15 are allowed.
7. Claims 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.


Thomas B. Will
Supervisory Patent Examiner
Group 3600